

UNITED STATES DISTRICT COURT  
FOR THE  
DISTRICT OF MASSACHUSETTS

FILED  
IN CLERKS OFFICE  
2004 JUL -6 P 1:33  
U.S. DISTRICT COURT  
DISTRICT OF MASS

INTAC INTERNATIONAL, INC.

Plaintiffs,

v.

ACORP D/B/A ROOTERMAN  
Defendants.

Civil Action No. 04-10040-REK

**PLAINTIFF'S INITIAL DISCLOSURE IN RESPONSE TO RULE 26A**

Pursuant to Fed. R. Civ. P 26(a) and Local Rule 26 (a) the Plaintiff INTERNATIONAL, INC. (hereinafter "Plaintiff" or "Intac") submits it's initial disclosure subject to preservation of any and all claims of privilege and without the waiver or forfeiture of any objection to discoverability or admissibility.

**A. Name address and telephone number of Individuals likely to have discoverable**

**Information:**

1. Dan Restivo, Intac International, Inc. Burlington, MA 01803, 781-272-4494.
2. Art Chadbourne, Intac International, Inc. Burlington, MA 01803, 781-272-5652.

**B. Documents and Tangible things in the possession, custody or control of Plaintiff:**

1. Screenshots for Wintac versions 1.5, 2.1, 2.5, 3.1, 4.1, 5.5, 7.2. (Approximately 50 screenshots demonstrating Wintax expression.)
2. Wintac software.
3. Wintac demonstration disks.

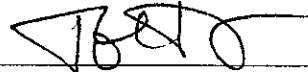
4. Wintac order registration forms and upgrade order forms from Rooterman, Donald McDonald, A-Corp, and copy of Sewerman draft.
5. A-Corp franchise disclosure documents.
6. Copyright registration for Wintac.
7. Rooterman marketing information.
8. Marketing information on ASOFT software.
9. Wintac Single User License issued to ACORP.
10. Corporate records information for Acorp., Sewerman, and Rooterman.
11. Letter to Intac form Donald MacDonald.
12. Upgrade requests from unlicensed Acorp franchisees.

**C. Damages:**

Plaintiff claims damages for infringement pursuant to 17 U.S.C. § 504. As trial proceeds and prior to final judgment, see 17 U.S.C § 504 (b) and (c) (1), Plaintiff's may elect to seek either Actual Damages and Profits or Statutory damages. Should Intact elect to seek actual damages Plaintiff's seek all profits as set forth under the act, which include a showing by Plaintiff of Defendants gross profits, in this case an apportionment for all franchise fees rendered in accordance with the infringing software, allocated by gross revenues. See *Data Gen. V. Grumman Systems Support*, 36 F. 3<sup>rd</sup> 1147, at 1158 (1<sup>st</sup> Cir. 1994). Defendant would then have the opportunity to prove reasonable deductible expenses to be deducted from the gross revenues under 17 U.S.C. § 504 (b). Here Plaintiff has acquired proof of the infringement but as yet the scope is not fully ascertainable. Plaintiff seeks gross damages for all sales made with the infringing Wintac software.

Plaintiff also reserves the right to seek statutory damages for willful acts of infringement by each Defendant 17 U.S.C. § 505 C (2). Willful damages may be assessed at up to \$150,000 per Defendant. See also *Venegas-Hernandez v. Sonolux Records*, 03-2014 (1<sup>st</sup> Cir. June 7, 2004). Plaintiff also seeks attorney fees pursuant to 17 U.S.C. §505.

**INTAC INTERNATIONAL,**  
By its attorney



John J. Flanagan (BBO#649222)  
Torti Flanagan, P.C.  
146 Main Street  
Norfolk, MA 02056  
(508) 520-0803

Dated: June 30, 2004

CERTIFICATION

On the 15<sup>th</sup> day of June, 2004 the undersigned forwarded a copy of the enclosed disclosure to William H. McCarter, Esq. 01890, PO Box 1044, Winchester, MA 01890.

